IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 77-1413

JANE ARONSON,

Petitioner,

v.

QUICK POINT PENCIL COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

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FIDELITY PRINTING COMPANY, HOUSTON

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Now comes the Patent, Trademark and Copyright Section of the State Bar of Texas and files this its motion for leave to file a brief in this matter as Amicus Curiae.

The Amicus consists of approximately 275 Texas lawyers whose practice is predominantly or entirely in the intellectual property field, and virtually all of whom deal with the problems of licensing patents, know-how and trade secrets. Nearly all of the lawyers in Texas who practice predominantly in the intellectual property field are members of the Section. The practice of these lawyers includes preparation and negotiation of patent licenses, know-how

transfers and trade secret assignments, as well as representation of each side in disputes arising out of such agreements. Some members are sole practitioners, some are members of small to quite large law firms, and some are house counsel for medium to large corporations. Clients represented by the members include individuals, small businesses and large corporations. Because of the nature of their practice the members have become knowledgeable concerning the business and economic realities of dealing with the transfer of intellectual property.

The Amicus has no interest in the outcome of this particular case, but does have a great interest in the continuing viability of state laws under which parties may contract with respect to rights to intellectual property, so long as there is no conflict with the Patent Laws or the Federal Antitrust Law. We are concerned with the maintenance of perhaps thousands of commercial transactions entered into in good faith by parties who knew the benefits and costs involved, and bargained for what they received, with the expectation by all concerned that royalties provided for by the agreements would be paid in accordance with the agreed-upon terms.

The Question presented is much broader than the specific fact situation which is before the Court. The parties themselves will, of course, direct their briefs to this specific fact situation, but they may fail to give adequate consideration to the broader aspects of the Question presented to the Court for consideration.

Thus the particular case before the Court involves a fact situation including a written contract, in which a patent application was involved, the contract specifically providing that royalties would be paid at a reduced rate if no patent issued. The article which was licensed under the agreement was completely disclosed by the marketing of

the article, and the Court of Appeals questioned the existence of a trade secret. There was no finding that coercion was a factor.

The Question presented for consideration, however, is much broader than this, encompassing situations in which no patent application was filed, in which the subject matter was not secret at the time the contract was entered into, and in which there was no reduction in royalty provided for upon abandonment of attempts to patent. It is apparent that a decision on such a broadly stated Question may have far reaching implications that cannot now be fully anticipated.

In its brief Amicus wishes to treat these more general aspects of the Question presented so that the Court may be made fully aware of the possible implications of any decision which it may reach.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Ned L. Conley, a member of the Bar of this Court, hereby enters his appearance in this case as attorney for the Patent, Trademark and Copyright Section of the State Bar of Texas, Amicus Curiae, and certifies that the foregoing Motion was served by mailing, Air Mail, Postage Prepaid, three copies to each of:

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on this the .... day of August, 1978.

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